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SUBJECT: CANADIAN BROADCAST REGULATION ON THE ROPES?

REF: 03 OTTAWA 2657 AND PREVIOUS

¶1. A Quebec court ruled on October 28 that the GOC's measures to prevent Canadians from subscribing directly to U.S.-origin satellite television services are unconstitutional. Industry lawyers are scrambling to interpret the repercussions of this ruling, which could be read as striking down any GOC measure to prevent Canadians from viewing foreign-origin television broadcasts. If it stands, it would come into broad effect in one year and, based on initial analysis, would undermine Canada's obsolescent broadcast regulatory structure - which is already under attack, notably for its restrictions on "third language" channels (those in languages other than French or English).

¶2. Until the ruling takes broad effect, it remains illegal for non-Canadian satellite TV services (such as DirecTV) to market directly in Canada. Canadians who want such services must either steal the signal using unauthorized decoding equipment ("black market"), or subscribe via a U.S. mailing address ("gray market"). It is not yet clear whether the ruling "decriminalizes" only the latter activity, or the former as well.

¶3. Canada has long-standing, complex regulatory arrangements to restrict non-Canadian "cultural products," particularly in broadcasting, and to promote the availability of Canadian content. In recent years, this included raiding and prosecuting businesses which provided hardware and services to connect Canadians to foreign satellite TV by "black" or "gray" methods. In 2003, the government announced plans to increase the associated penalties (reftel).

¶4. The October 28 court ruling, known as "R. c. Theriault" (criminal charges against two accused, Theriault and d'Argy), found the charges to be inconsistent with the Canadian constitution's guarantee of "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." (The ruling is available, though as yet only in French, at website "jugements.qc.ca" under "Cour du Quebec").

¶5. The Coalition Against Satellite Signal Theft (CASST), a Canadian broadcast industry group which has struggled to preserve the existing broadcast regulatory structure, says that a GOC appeal is both necessary and certain. If the ruling stands, according to CASST, it would mean "the end of the existing Canadian broadcasting system." (Comment: While they may be right, CASST tend to identify the "system" with the current structure. It may not adequately represent those whom that structure excludes or disadvantages. End comment).

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